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DEPARTMENT OF STATE
THE SECRETARY

✓

February 8, 1962

MEMORANDUM FOR THE HONORABLE
McGEORGE BUNDY ←

I believe the President might be interested in the attached legal comment on our position in Guantanamo. The political aspects are also being studied.

DR
Dean Rusk

✓ page 1 and last
If are relevant

1973
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February 2, 1962

MEMORANDUM

To: The Secretary
Through: S/S
From: L - Leonard Meeker
Subject: Guantanamo Base

Problem

What are the rights and legal position of the United States in the event of a Cuban denunciation of the Guantanamo Base arrangements?

Conclusions

If Cuba were to denounce and repudiate the arrangements by which the United States has a base at Guantanamo, the United States would be on strong ground to assert (1) that the Cuban denunciation and repudiation were ineffective; (2) that we retained our base rights; and (3) that we would be justified in resisting with force any attempt to evict our armed forces from the base. These conclusions stem from the following considerations:

- (a) The right of the United States in Guantanamo is more than a right to maintain a base on territory under the sovereignty of Cuba and governed by Cuban law; by international agreement and treaty the United States obtained the lease of a defined area and received from Cuba the right of "complete jurisdiction and control" in that area.
- (b) No date was set for the termination of these rights, and the relevant international instruments specify that they are to continue until modified or abrogated by agreement between the United States and Cuba.

Background

SANITIZED

E.O. 11652, SEC. 3(E), 5(D), 5(E) AND 11

~~CONFIDENTIAL~~

State NLK-73-30

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BY SKF

Background

In February 1903 the President of Cuba and President Theodore Roosevelt signed an "Agreement for the Lease to the United States of Lands in Cuba for Coaling and Naval Stations". This included a lease covering the Guantanamo base, whose boundaries were described in Article I of the Agreement. Article II stated: "While on the one hand the United States recognizes the continuance of the ultimate sovereignty of the Republic of Cuba over the above described areas of land and water, on the other hand the Republic of Cuba consents that during the period of the occupation by the United States of said areas under the terms of this agreement the United States shall exercise complete jurisdiction and control over and within said areas" The Agreement contained no terminal date and no provision for termination.

The Treaty of Relations with Cuba which was signed in May 1903 (and ratified the following year) stated in Article VII:

"That to enable the United States to maintain the independence of Cuba, and to protect the people thereof, as well as for its own defense, the Government of Cuba will sell or lease to the United States lands necessary for coaling or naval stations, at certain specified points, to be agreed upon with the President of the United States."

On the basis of the February 1903 Agreement for Lease and the above-quoted Article VII in the 1903 Treaty of Relations, a lease was signed July 2, 1903 and ratified later that year. The lease specified a rental, and contained certain other provisions in pursuance of the February Agreement.

In 1934 a new Treaty of Relations was signed with Cuba in May and brought into force June 9 of that year. The 1934 Treaty expressly abrogated the Treaty of Relations signed

May 22,

May 22, 1903. However, Article III of the 1934 Treaty contained the following provision on Guantanamo:

"Until the two contracting parties agree to the modification or abrogation of the stipulations of the agreement in regard to the lease to the United States of America of lands in Cuba for coaling and naval stations signed by the President of the Republic of Cuba on February 16, 1903, and by the President of the United States of America on the 23d day of the same month and year, the stipulations of that agreement with regard to the naval station of Guantanamo shall continue in effect. The supplementary agreement in regard to naval and coaling stations signed between the two Governments on July 2, 1903, also shall continue in effect in the same form and on the same conditions with respect to the naval station at Guantanamo. So long as the United States of America shall not abandon the said naval station of Guantanamo or the two Governments shall not agree to a modification of its present limits, the station shall continue to have the territorial area that it now has, with the limits that it has on the date of the signature of the present Treaty."

As to the Isle of Pines, the 1903 Treaty of Relations had provided as follows in Article VI:

"That the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty."

In March 1904 the United States and Cuba signed a Treaty by which the United States relinquished in favor of Cuba "all claim of title to the Island of Pines". Article II of this treaty provided:

"This relinquishment, on the part of the United States of America, of claim of title to the said Island of Pines, is in consideration of the grants of

coaling

coaling and naval stations in the Island of Cuba heretofore made in the United States of America by the Republic of Cuba."

The treaty was ratified and entered into force 21 years later, in March 1925.

Discussion

The United States presence in Guantanamo rests upon international agreements containing no termination date and making no provision for unilateral termination. Our rights subsist "until the two contracting parties agree to the modification or abrogation" of the Guantanamo lease arrangements.

These arrangements differ from the military base agreements concluded in recent years, since the United States is given a right of "complete jurisdiction and control" in a defined base area. The Guantanamo arrangement more nearly resembles the arrangements with Panama concerning the Canal Zone than the military base agreements concluded by the United States with NATO allies and others during the last 12 years. In the case of the Canal Zone, the United States was granted "in perpetuity the use, occupation and control" of the Zone. The grant covered "all the rights, power, and authority within the Zone . . . which the United States would possess and exercise if it were the sovereign of the territory". Another analogy is Article III of the Treaty of Peace with Japan, under which the United States received "the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants" of the Ryukyu Islands, pending the placing of these islands under trusteeship. It has been recognized that Japan retains residual sovereignty.

A declaration by Cuba that it denounced, repudiated, or abrogated the Guantanamo Base arrangements would be legally ineffective. Those arrangements are to continue, according to their terms, until agreed otherwise between the United States and Cuba. An allegation of the doctrine

of rebus sic

of rebus sic stantibus (changed circumstances) as a ground for unilateral termination would not be well founded. Application of the doctrine has never been upheld by an international judicial tribunal. The leading writers on international law state that the doctrine may be applied only by agreement of the parties or through the decision of a tribunal.

Thus, if Cuba should claim that unilateral statements or actions on its part operated to deprive the United States of its Guantanamo base rights, we would be on strong legal ground in refuting this contention, and in using the necessary force to defend the base at Guantanamo and maintain our position there.

The treaty stipulations regarding the Isle of Pines, made in the Treaty of Relations of 1903 and the separate 1904 treaty ratified in 1925, do not affect the status of the Guantanamo Base. The latter treaty merely stated that the transfer of the Isle of Pines was in consideration of the "grants of coaling and naval stations . . . heretofore made" (i.e., Guantanamo). United States rights in the base were fixed by the terms of those grants and are not affected by any political connection with the transfer of the Isle of Pines.